FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing requesting approval of a modified plan for parking, pursuant to Sections 409.12.B and 409.8.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a restaurant and bar located in the Chesapeake Bay Critical Areas in Eastern Baltimore County.

The Petitioners, John W. and Josephine Falkenstein, appeared, testified and were represented by Michael P. Tanczyn, Esquire. Mr. Tanczyn proffered testimony on behalf of the Petitioners. Appearing as an interosted party in the matter was David C. Flowers with the Department of Environmental Protection and Resource Management (DEPRM). There were no Protestants.

Testimony indicated that the subject property, known as 1006 Back River Neck Road, consists of 1.78 acres zoned R.C. 20 and is improved with a one story frame building. Said property is the site of Johann's Tavern and is located within the Chesapeake Bay Critical Areas near Muddy Gut Crock and Back River. Petitioners are desirous of bringing the use of the property in compliance with all applicable Baltimore County regulations. However, due to Chesapeake Bay Critical Areas legislation and B.C.Z.R requirements, the parking layout and use of the lot must be modified. Testimony indicated that Petitioners had been experiencing difficulty in meeting the requirements of the Department of Environmental Protection and Resource Management (DEPRM) as to Critical Areas legislation. Mr. Tanczyn testified that the Petitioners have been diligently working with Mr. Flowers to comply with all requests made by DEPRM and other Baltimore County agencies, and that an agreement had been reached to the satisfaction of all parties concerning the requested modified plan. It was agreed by all parties at the hearing that Petitioners would submit a revised site plan evidencing the substance of all agreements entered into between them and Baltimore County.

On the face of the Petition for Special Hearing, Mr. Tanczyn represents that it is impossible for the Petitioners to comply with DEPRM requirements under the Critical Areas legislation and the B.C.Z.R. regarding parking in the Critical Areas. I disagree with his argument and find that it is possible to satisfy both sets of regulations. As a matter of fact, the Petitioners were successful in this particular case of satisfying all requirements and the modified plan, upon revision, shall be approved.

As previously noted, this property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with any and all recommendations made by DEPRM in accordance with the agreement reached between them. A copy of DEPRM's findings plan shall be submitted to this Office for inclusion in the case file. Based upon the testimony presented, there is no evidence that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with DEPRM requirements as agreed to herein.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 27 day of February, 1992 that the Petition for Special Hearing requesting approval of a modified plan for parking, pursuant to Sections 409.12.B and 409.8.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a restaurant and bar in accordance with the revised site plan to be submitted and marked Exhibit A. be and is hereby GRANTED, subject to the following restrictions:

> 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) Within thirty (30) days of the date of this Order, Petitioners shall submit to this Office a revised site plan evidencing the substance of the agreements reached between the Petitioners, DEPRM, and all other Baltimore County agencies. Said plan shall be marked Exhibit A and shall be the controlling site plan for this proper-

3) Within thirty (30) days of the date of this Order, Petitioners shall submit a landscape plan for approval by the Deputy Cirector of Planning and the Landscape Planner for Baltimore County. A copy of the approved plan shall be submitted to this Office for inclusion in the case file.

- 3-

4) Upon completion of their findings plan, DEPRM shall submit a copy of same to this Office for inclusion in the case file.

TMK:bjs

Deputy Zoning Commissioner for Baltimore County

O FOP

Baltimore County Government Zoning Commissioner Office of Planning and Zoning

Suite 113 Courthouse 400 Washington Avenue Towson, MD 21204

SCEIVED FOR FILIN

(410) 887-4386

February 29, 1992

Michael P. Tanczyn, Esquire 606 Baltimore Avenue, Suite 106 Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING SW/Corner Back River Neck Road and Cherry Garden Road (1006 Back River Neck Road) 15th Election District - 5th Councilmanic District John Falkenstein, Sr., et ux - Petitioners Case No. 92-264-SPH

Dear Mr. Tanczyn:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

> Very truly yours, TIMOTHY M. KOTROCO Deputy Zoning Commissioner for Baltimore County

cc: Chesapeake Bay Critical Areas Commission Tawes State Office Building, D-4, Annapolis, Md. 21401

People's Counsel

Petition for Special Hearing

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a modified plan for parking pursuant to BCZR 409.12.B and pursuant to BCZR 409.8.B.1. The compliance with requirements of DEPRM under the Critical Areas Legislation and the BCZR is impossible because of conflicting requirements of both sets of regulations and would represent an impossibility and undue hardship on the applicants for this property, formerly known as Cherry Garden Lounge and now Johann's, which is one of the oldest continuously operated restaurant/lounge in

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Legal Owner(s):

		BEVIEWED BY:	DATE
	ROPIET OF	ESTIMATED LENGTH OF	LE FOR HEARING D NEXT TWO MONTHS
<u> </u>	Attorney's Telephone No.: 296-8823	Address	Phone No.
	City and State	Name	
	Towson, Maryland 21204	TORSON TANALUMBURGUS CONTROLOGIS	
	606 Baltimore Avenue Suite 106 Address	Name, address and phone number tract purchaser or representative	
e.	Signature	Towson, Maryland 2120 City and State	14
	MICHAEL P. TANCZYN ESO. (Type or Print Name)	Address	Phone No.
	Attorney for Petitioner:	1106 Valewood	·
	City and State	Josephine Falkens	tein
	Address	(Type or Print Name)	
	Signature	the Juliungten Signature	a/h.
	(Type or Print Name)	JOHN FALKENSTEIN, SR.	1

Registered Land Surveyor

FRANK S. LEE

1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

April 13, 1989

Johann's Tavern 1006 Back River Neck Road 15th District Baltimoew County, Maryland

Beginning for the same in the center of Back River Neck Road with the south side of Cherry Garden Road if extended easterly, thence running and binding on the center of Back River Neck Road South 5 degrees 49 minutes West 298.07 feet, thence leaving Back River Neck Road for two lines of division North 78 degrees 34 minutes West 268 feet and North 5 degrees 35 minutes East 279.73 feet to the south side of Cherry Garden Road, thence binding on the south side thereof South 82 degrees 30 minutes East 268 feet to the place of beginning.

Containing 1.78 acres of land more or less.



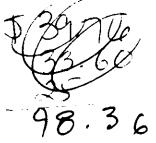
CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towns, Maryland		
District 15th Posted for: Spaint Head	Date of Posting 1/1/92	
Petitioner: John + Juseph	ino Folkoystoin	
Location of property: WB BOOK 1006 Book Rila	NaRa	
_	Both Reds. North Red Mapine & January	
On to both 10 pr		

- 1-

CERTIFICATE OF PUBLICATION NOTICE OF MEASURE The Zenting Commissioner of Ballimore County, by authority of the Zoning Act and Regulations of Ballimore County will hold a public hearing on the property dentitled herein in Room 116, Ballimore County Courthouse, 400 Washington Avenue, Touson, Maryelnd 21204 as follows: THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published

in Towson, Baltimore County, Md., once in each of ____ successive

THE JEFFERSONIAN,



DEPRM

Contract Purchaser/Lessee:

to the Zoning Commissioner of Baltimore County 42-264

the eastern portion of Baltimore County. Property is to be posted and advertised as prescribed by Zoning Regulations.

under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

CERTIFICATE OF PUBLICATION THE AVENUE NEWS

Balto.. MD. 21221 January 16, 19 92

THIS IS TO CERTIFY, that the annexed advertisement of Falkenstein in the matter of Zoning Hearings

for 1006 Back River Neck Rd. Case # 92-264-SPH P.O. #0116826, Req #M57337. 49 lines @.60 or

modified plan for parking.

was inserted in The Avenue News a weekly newspsaper published in Baltimore County, Maryland once a week for _____ successive week(s) before the 17 day of January 19 92; that is to say, the same was inserted in the issues of <u>January 16</u> 1992

The Avenue Inc.

NOTICE OF HEARING The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as fol-| Cours:
| Case Number: 19-294-874|
WS Beck River Neck Read, 9'S Charry Gorden
Read on SWC of Back River Reck Read of
Charry Gorden Read
1885 Back River Read Johann's Toward
1885 Back River Read Johann's Toward
1886 Election District - 9th Councilments
Pullisearing: John and Josephine Fallensials
MEARING: 18098AV, FERMANY 10, 1982
of 1-70 and 1 Special Hearing to approve a

jigileoen Baltimore County Zoning Commision
County Office Building
111 West Chesepeake Ave
Towson, Maryland 21204 Contract all of the first and the complete of the first of the complete the property of the section of the first of the 04A04400176701889 ~4 (003:56FMP) 00 92 Please Make Checks Payable To: Baltimore County 19 Jenie Baltimere County

Zoning Commission
County Office Building Zoning Commissioner
County Office Building 111 West Chesapeake Avenue Please Make Checks Payable To Baltimore County

Baltimore County Government Office of Zoning Administration and Development Management Office of Planning & Zoning

111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

DATE: 1-22-92

John and Josephine Falkenstein 1106 Valewood Towson, Maryland 21204

CASE NUMER: 92-264-SPH W/S Back River Neck Road, S/S Cherry Garden Road on SWC of Back River Neck Road and Cherry Garden Road 1006 Back River Neck Road (Johann's Tavern) 15th Election District - 5th Councilmanic Petitioner(s): John and Josephine Falkenstein

Dear Petitioner(s):

THIS FEE MUST BE PAID. ALSO, THE ZOMING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL MOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL. THE DAY OF THE

Please forward your check via return smil to the Zoning Office, County Office Building, 111 W. Chesapsake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made psyable to Baltimore County, Maryland. In order, to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

cc: Michael P. Tancayn, Esq.

Baltimore County Government Office of Zoning Administration and Development Management Office of Planning & Zoning

111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

JAN 0 9 1992

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Haryland 21204 as follows:

W/S Back River Neck Road, S/S Cherry Garden Road on SMC of Back River Neck Road and Cherry Garden Road 1006 Back River Neck Road (Johann's Tavern) 15th Election District - 5th Councilmanic Petitioner(s): John and Josephine Falkenstein

Special Hearing to approve a modified plan for parking.

HEARING: MONDAY, PERGUARY 10, 1992 at 9:30 a.m.

Baltimore County

cc: Mr. & Mrs. Falkenstein Michael P. Tanczyn, Esq.

Baltimore County Government Office of Zoning Administration and Development Management
Office of Planning & Zoning

(410) 887-3353

and the second of the second o

January 28, 1992

Michael P. Tanczyn, Esquire 606 Baltimore Avenue, Suite 106 Towson, MD 21204

RE: Item No. 278, Case No. 92-264-SPH Petitioner: John Falkenstein, et ux Petition for Special Hearing

Dear Mr. Tanczyn:

111 West Chesapeake Avenue

Towson, MD 21204

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committe Coments Date: January 28, 1992

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the peition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or imcompleteness.

Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Zoning Plans Advisory Committee

JED:jw **Enclosures**

cc: Mr. & Mrs. John Falkenstein 1106 Valewood Road Towson, MD 21204

Baltimore County Government Office of Zoning Administration and Development Management Office of Planning & Zoning

111 West Chesapeake Avenue Towson, MD 2120±

(410) 887-3353

Your petition has been received and accepted for filing this

Petitioner: John Falkenstein, et ux Petitioner's Attorney: Michael P. Tanczyn

3rd day of January, 1992.

Baltimore County Government Fire Department

700 East Joppa Road Suite 901 Towson, MD 21204-5500

JANUARY 13, 1992

(301) 887-4500

Arnold Jablon

Director Zoning Administration and Development Management Baltimore County Office Building Towson, MD 21204

RE: Property Owner: JOHN FALKENSTEIN, SR. AND JOSEPHINE FALKENSTEIN #1006 BACK RIVER NECK ROAD Location:

Zoning Agenda: JANUARY 14, 1992 Item No.: 278

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

Fire Prevention Bureau Special Inspection Division

JP/KEK

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: January 16, 1992 Zoning Administration and Development Management

Zoning Advisory Committee Meeting for January 14, 1992

FROM: Robert W. Bowling, P.E.

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 276, 277, 278, 279, and 280.

For Item 281, a County Review Group Meeting will be required, unless a waiver of same is approved.

ROBERT W. BOWLING, P.E., Chief Developers Engineering Division

RWB:s

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT INTER-OFFICE CORRESPONDENCE

DATE: January 22, 1992 Mr. Arnold Jablon, Director Office of Zoning Administration and Development Management

FROM: Patricia M. Farr

Zoning Hearing - Item 278

The Chesapeake Bay Critical Area Program requests an extention for the review of the petition request for a Special Hearing for Johanns Tavern. Additional information is necessary to complete a Critical Area Findings for this property.

For further information, contact Ms. Nancy Pentz at 887-3930.

Chesapeakee Bay Critical Area

cc: Ms. Gwen Stephens JABLON/TXTVVB



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT INTER-OFFICE CORRESPONDENCE

DATE: February 7, 1992 TO: Mr. Arnold Jablon, Director Office of Zoning Administration and Development Management

FROM: J. James Dieter, Director

SUBJECT: Zoning Hearing - Item 278 Case No. 92-264-SPH Mr. John Falkenstein; Johann's Tavern

The Chesapeake Bay Critical Area Program has not completed a review of this project. A revised site plan is needed to clarify some issues that relate directly to redevelopment within a Resource Conservation Area. A meeting was held on February 7, 1992 with Ms. Nancy Pentz, Mr. David Flowers, and Mr. Michael Tanczyn. The purpose of this meeting was to explain the following concerns:

> Findings Plan Impervious Surface Location Wetlands and Buffers Forest Cover

These concerns will be addressed and necessary adjustments made to the Findings Plan. Therefore this division cannot provide an approved Findings for this project until the necessary information has been submitted and the Findings Plan amended. For further information, contact Ms. Nancy Pentz at 887-2904.

JJD:NSP:ju

JOHANNS/WQCBCA

cc: Mr. Michael Tanczyn

Law Offices

Michael P. Tanczyn, P.A. Suite 106, 606 Baltimore Avenue Towson, Maryland 21204 (301) 296-8823 • (301) 296-8824

Fax: (301) 296-8827

H275 THE CAL PRODE

December 31, 1991

Honorable Larry Schmidt Baltimore County Zoning Commissioner 111 West Chesapeake Avenue Towson, MD 21204

Re: 1006 Back River Neck Road

Dear Mr. Schmidt:

I represent Mr. and Mrs. Falkenstein, the owners of the above property, whose prior request to improve their property was caught in the switches when the Critical Areas Legislation was enacted by Baltimore County some time ago.

I enclose a letter sent us from Arnold Jablon, Esq. of ZADM concerning this property which followed a meeting with Mr. Jablon, Mr. James Dyer, Mr. David Flowers, Mr. Frank Lee the surveyor, Mr. Falkenstein, and I which antedated your appointment. By the attached special hearing with exhibit we are requesting that you invoke your discretionary power under Baltimore County Zoning Regulation Section 409.12.B to approve a modified plan for the parking area in an attempt by the property-owner to accommodate the conflicting requirements of two or more County agencies, which would in our opinion frankly render compliance with both sets of requirements an impossibility and thus an extreme or undue hardship on the owners as provided for in Section 409.12.B as a basis for consideration under that section of a modified plan.

It is my understanding under Section 409.8.B.1 that after posting if the situation is as described in Section 409.8.B.1.C you may exercise your power if you deem it appropriate under that section to move this matter along.

The paramount consideration is that a District Court violation case concerned with the same issue would be mooted in my opinion should the matter not require a public hearing and could with the concurrence of the Office of Law be stayed even if a public hearing is requested pending a decision following hearing.

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

DATE: January 29, 1992 Arnold Jablon, Director Zoning Administration and Development Management

Gary L. Kerns, Chief Comprehensive and Community Planning Office of Planning and Zoning

SUBJECT: Falkenstein Property, Item No. 278

In reference to the Petitioner's request, the staff offers the following comments:

This office defers its recommendation to DEPRM since compliance with the requirements of the Critical Areas Legislation is the most important aspect of this case.

Should the applicant's request be granted, a landscape plan shall be filed with the deputy director of the Office of Planning and Zoning. Subsequent to plan approval, a copy shall be forwarded to the Zoning Office and made part of the official file.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PETITIONER(S) SIGN-IN SHEET

1006 VALEWOOD Rd. ZIZOY

Report prepared by:

GLK/JL:rdn ITEM278/TXTROZ

PLEASE PRINT CLEARLY

JOHN W. FALKENSTEIN SI

19 964 WH

BUREAU OF TRAFFIC ENGINEERING DEPARTMENT OF PUBLIC WORKS BALTIMORE COUNTY, MARYLAND

DATE: January 14, 1992

Mr. Arnold Jabion, Director Office of Zoning Administration and Development Management

Rahee J. Famili SUPJECT: Z.A.C. Comments

E.A.C. MEETING DATE: January 14, 1992

ITEM NUMBER: 278

2-10

The proposed access off Back River Nock Road should be 30 ft. wide. The southern curb line of that access should be moved up 5 ft. to the

Traffic Engineer JI

RJF/Ava

Baltimore County Government Office of Zoning Administration and Development Management Office of Planning & Zoning

October 16, 1991

111 West Chesapeake Avenue Towson, MD 21204

887-3353

Michael P. Tanczyn, Esquire 606 Baltimore Avenue, Suite 106 Towson, MD 21204

RE: John W. and Josie Falkenstein

Property Owners 1006 Back River Neck Road

Dear Mr. Tanczyn:

As a follow-up to the meeting which occurred on August 29, 1991 in my office, attended by you, Mr. Falkenstein, David Flowers of DEPRM, Frank Lee, land surveyor, and James Dyer, Zoning Supervisor, we discussed your client's property at the above address and his dilemma to accommodate the storm water runoff regulations of DEPRM with the durable and dust-free surface requirements for the parking area in front and to the side of existing lounge.

If your client wishes to seek a modification to his parking plan based on the hardship created, previously discussed, by filing a Petition for Special Hearing, Section 409.12B, Baltimore County Zoning Regulations, the Zoning Office would consider a proposal to pave the portion to the front of the building with a porous parking surface to the side under such a Petition as a reasonable resolution of this situation.

This of course would be subject to any objections which might be noted with the property to be posted which would require a hearing if such objections were timely filed with the Zoning Office.

AJ:eoh

cc: Mr. James E. Dyer Zoning Supervisor

Mr. David Flowers

Mr. Frank Lee

Mr. John Falkenstein